

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)
)
 Amendment of Section 73.202(b),)
 Table of Allotments,)
 FM Broadcast Stations)
 (Littlefield, Wolfforth and)
 Tahoka, Texas)

MM Docket NO. 95-8
 RM-8634

RECEIVED
 MAY 16 1997
 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF SECRETARY

**REPLY TO OPPOSITION TO PETITION FOR PARTIAL
 RECONSIDERATION**

21st Century Radio Ventures, Inc. ("Petitioner"), hereby replies to the Opposition to Petition for Partial Reconsideration submitted by El Paso and Lubbock, Inc., licensee of KLLL(AM) and KLLL(FM), Lubbock, Texas ("KLLL"). In its Petition for Partial Reconsideration, Petitioner requested that the Commission reconsider its decision not to take action with respect to the deletion or, alternatively, substitution of Channel 237A at Tahoka, Texas and that if the Commission should so decide to take such action that it substitute Channel 278A for Channel 237A at Tahoka, Texas. The Commission should now decide this issue as it will be in the public interest to avoid expending limited Commission resources on a new rule making to decide the same issue. KLLL wrongly asserts that the Request for Partial Reconsideration is a late filed counter proposal. This is clearly incorrect as the issue was squarely presented in the Notice of Proposed Rule Making in the above referenced docket. Section 553 of the Administrative Procedures Act demands only that reasonable and fair notice be given

of a proposed action in an NPRM. Such notice was clearly given in the NPRM in the instant docket and a decision on the issue may be said to be the logical outgrowth of the proposal set forth in the NPRM.

I. The Requested Action May Appropriately Be Carried Out As Part of A Petition for Partial Reconsideration

KLLL attempts to mischaracterize the requested action as a counterproposal. In fact, the requested action is precisely the type of Commission resource-conserving action that is appropriate on reconsideration.

Petitioner intends to construct its radio station at Littlefield. Petitioner would like to maximize its facilities to provide the best possible service to the public. In order to do so, Petitioner would like to move to a new site. Petitioner did not consider moving its site until now, because it did not want to purchase land or enter into other agreements in the Littlefield area if it was going to move to Wolfforth. Of course, the Commission determined that a change of city of license was not appropriate in this case. As discussed below, it is apparent that the best possible sites are in an area which are currently short spaced to unbuilt Channel 237A at Tahoka. A simple substitution of this unbuilt Channel to Channel 278A will maximize service to the public at Littlefield, while at the same time leaving Tahoka with an equivalent facility. The substitution is unopposed by the Permittee of Channel 237A at Tahoka.¹

¹See Comments on Petition for Partial Reconsideration filed by Albert Benevides on May 1, 1997. On May 9, 1997, the Commission granted Benevides' application for Channel 237A. This does not, of course, change the question of whether or not the public interest will be served by substituting Channel 237A for Channel 278A as part of reconsideration of the instant docket.

Reconsideration is appropriate in this case because Petitioner could not know what the Commission was going to decide with respect to its change of city of license. Once these facts became apparent as the result of the Commission's action, it did not change the need for a decision on the issue of the substitution of Channel 278A for Channel 237A because Petitioner wants to utilize a site that is short spaced to Channel 237A. The public interest will be served by deciding this issue on reconsideration because it will avoid duplicative proceedings on the issue.

Section 553 of the Administrative Procedures Act requires that a rule making provide adequate notice and a fair opportunity for interested parties to participate and present relevant information. In the Notice of Proposed Rule Making in Docket 95-83, the Commission sought expressions of interest in Channel 237A and noted that if there were expressions of interest the Commission proposed to substitute Channel 278A for Channel 237A (see paragraph 4). Thus, the public had ample opportunity to comment on the merits of the substitution of Channel 278A for Channel 237A.

The courts have applied a "logical outgrowth" test to determine whether a rule making action was based on adequate notice and opportunity for public participation. See, e.g., Weyerhaeuser Co. v. Costle, 590 F.2d 1011, 1031 (1978), South Terminal Corp. v. EPA, 504 F.2d 646 (1974). Clearly, a decision involving a substitution of Channel 278A for Channel 237A may logically flow from a rule making that explicitly sought comment on the issue, even if it was part of other matters upon which the Commission also sought comment. See, e.g., Pinewood, South Carolina, 4 FCC Rcd 8536 (1989). Because the Commission sought appropriate comments on this issue it

may now render a decision on the proposed substitution on reconsideration in order to avoid a duplicative and time consuming additional rule making proceeding.

II. The Requested Action Results in a Preferential Arrangement of Allotments

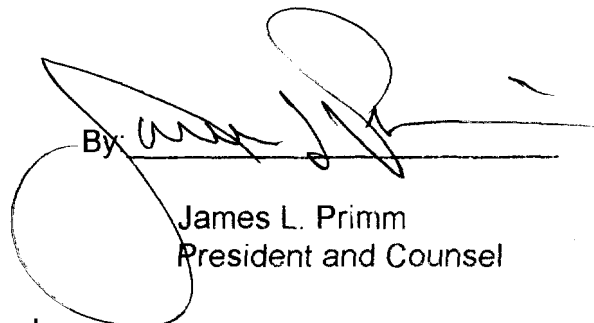
The attached engineering exhibit (see Exhibit 1) shows precisely the positive effect that the proposed substitution will have.² A total of 61,194 more people will receive service. In addition, Tahoka will still retain a second local service.

III. Conclusion

The Commission should expeditiously move to grant Petitioner's Petition for Partial Reconsideration so as to substitute Channel 278A for Channel 237A.

Respectfully submitted,

21st Century Radio Ventures, Inc.

By: 
James L. Primm
President and Counsel

21st Century Radio Ventures, Inc.
530 Wilshire Blvd., suite 301
Santa Monica, CA 90401
310-393-2741

May 15, 1997

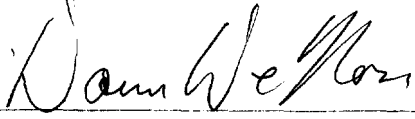
²Note that these precise figures, determined by Petitioner's consulting engineers, replace estimated figures provided in Petitioner's Petition for Partial Reconsideration in response to KLLL's question in its Opposition as to how such figures were derived.

CERTIFICATE OF SERVICE

I, Dawn E. DeNoon, hereby certify that on this 16th day of April, 1997, I caused to be delivered by first class mail, postage pre-paid, copies of the foregoing "Reply to Opposition to Petition for Partial Reconsideration" to the following:

William R. Richardson, Esq.
John Maull, Esq.
David G. Gray Esq.
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037
(Attorneys for KLLL)

Christopher D. Imlay, Esq.
Booth, Freret, Imlay & Tepper
1233 20th Street, N.W., suite 204
Washington, D.C. 20036
(Attorneys for Albert Benevides)



Dawn E. DeNoon

EXHIBIT 1
ENGINEERING EXHIBIT

du Treil, Lundin & Rackley, Inc.

A Subsidiary of A.D. Ring, P.A.

TECHNICAL EXHIBIT
PREPARED ON BEHALF OF
21ST CENTURY RADIO VENTURES, INC.
LITTLEFIELD, TEXAS

Technical Narrative

This technical exhibit has been prepared on behalf of 21st Century Radio Ventures, Inc. (herein "21ST Century"). 21ST Century is the permittee of FM station KAIQ on channel 238C3 at Littlefield, Texas (BPH-930726MB). The purpose of this technical exhibit is to provide information supporting the substitution or deletion of channel 237A at Tahoka, Texas as set forth by 21ST Century in MM Docket No. 95-83.

The attached Figure 1 is a tabulation of required separations pertinent to use of channel 238C3 at Littlefield. The study was conducted from the KAIQ transmitter site.

Figure 2 is a map showing the area-to-locate channel 238C3 at Littlefield in compliance with the Commission's minimum distance separation requirements and city coverage requirements based on maximum Class C3 facilities (ERP 25 kW/HAAT 100 m). The Littlefield city limits shown on Figure 2 were obtained from a map contained in the 1990 U.S. Census of Population. Consideration was given to both the allocation site (ALC) and proposed application (BPH-950824MC) site for channel 237A at Tahoka in determining the area-to-locate. As shown, the minimum distance separation requirements from the Tahoka application and allocation site (ALC) prevent use of a large portion of the area-to-locate.

Figure 3 is a map showing the area-to-locate channel 238C3 at Littlefield in compliance with the

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Littlefield, Texas

Commission's minimum distance separation requirements and city coverage requirements based on maximum Class C3 facilities without consideration given to either the allocation site (ALC) or proposed application (BPH-950824MC) site for channel 237A at Tahoka. As shown, without consideration being given to the minimum distance separation requirements from the Tahoka application and allocation site (ALC), the area-to-locate increases significantly in size.

Also shown on Figure 3 is the location of a proposed reference point for channel 238C3. Figure 4 is a tabulation of required separations pertinent to use of the proposed channel 238C3 reference site shown on Figure 3.

Figure 5 is a map which depicts the 70 dBu and 60 dBu contours based on the authorized KAIQ operation and based on operation from the proposed channel 238C3 reference site with maximum Class C3 facilities. The following tabulates the population within each contour:

Operation	1990 Census Population	
	70 dBu	60 dBu
Authorized KAIQ	7,516	11,829
Proposed Reference Site	26,572	73,023
Gain	19,056	61,194

Coverage Contours

The FM predicted coverage contours were calculated in accordance with the provisions of Section 73.313, except that uniform terrain was presumed in all directions from the proposed reference site.

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Littlefield, Texas

Population and Area

The population within each FM service contour was calculated using a computer program that utilizes the 1990 U.S. Census database of "population centroids". The program adds the populations of those U.S. Census designated areas whose centroid was within each service area. The area within each FM primary service contour was calculated using a root mean square algorithm.



W. Jeffrey Reynolds

du Treil, Lundin & Rackley, Inc.
240 North Washington Blvd.
Suite 700
Sarasota, Florida 34236

May 15, 1997

FM SEPARATION STUDY

Job Title :KAIQ CP Site

Separation Buffer 50 km

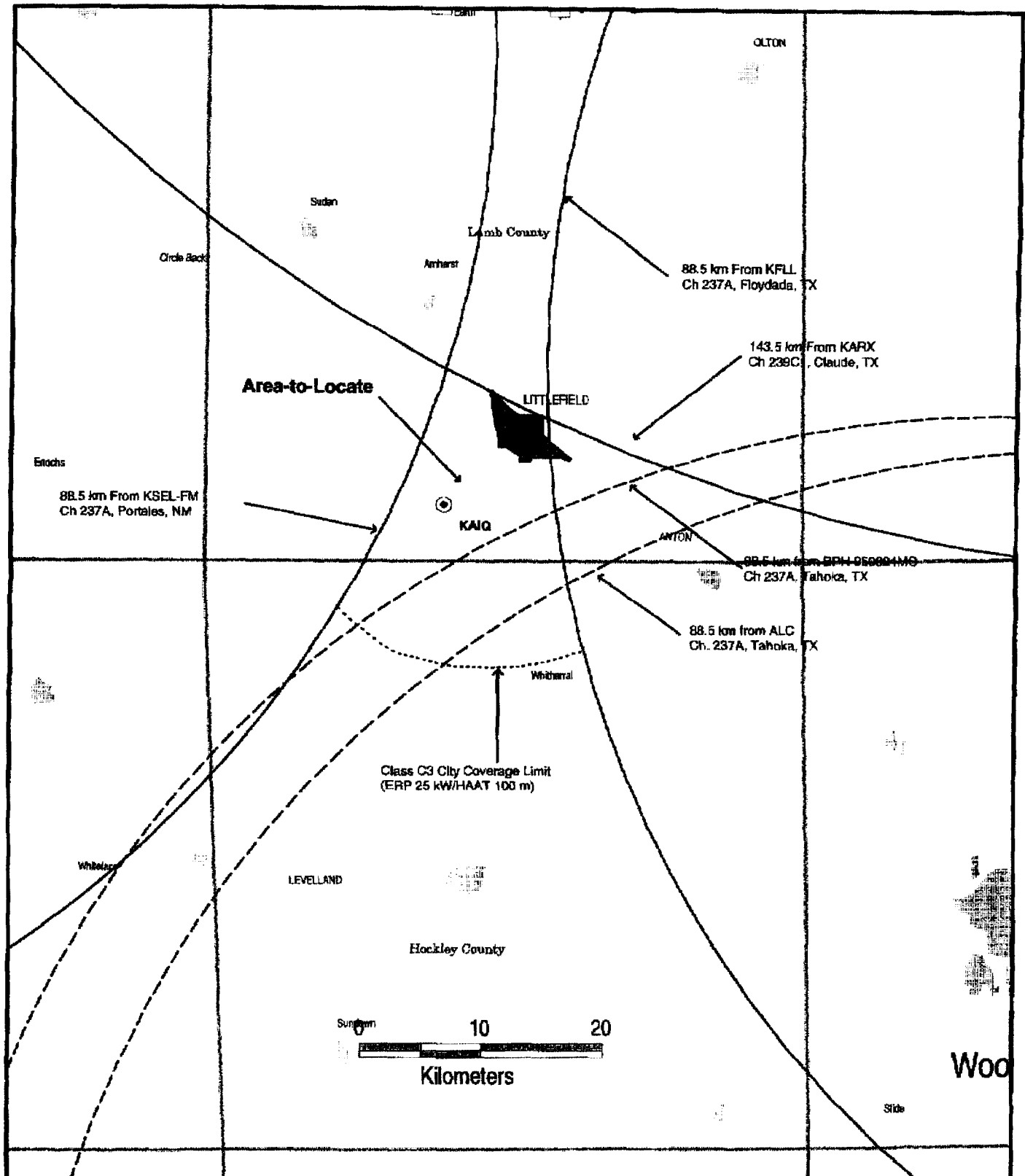
FCC DB Date : 05/09/97

Channel 238C3 (95.5 MHz)

Coordinates : 33-52-02 102-24-12

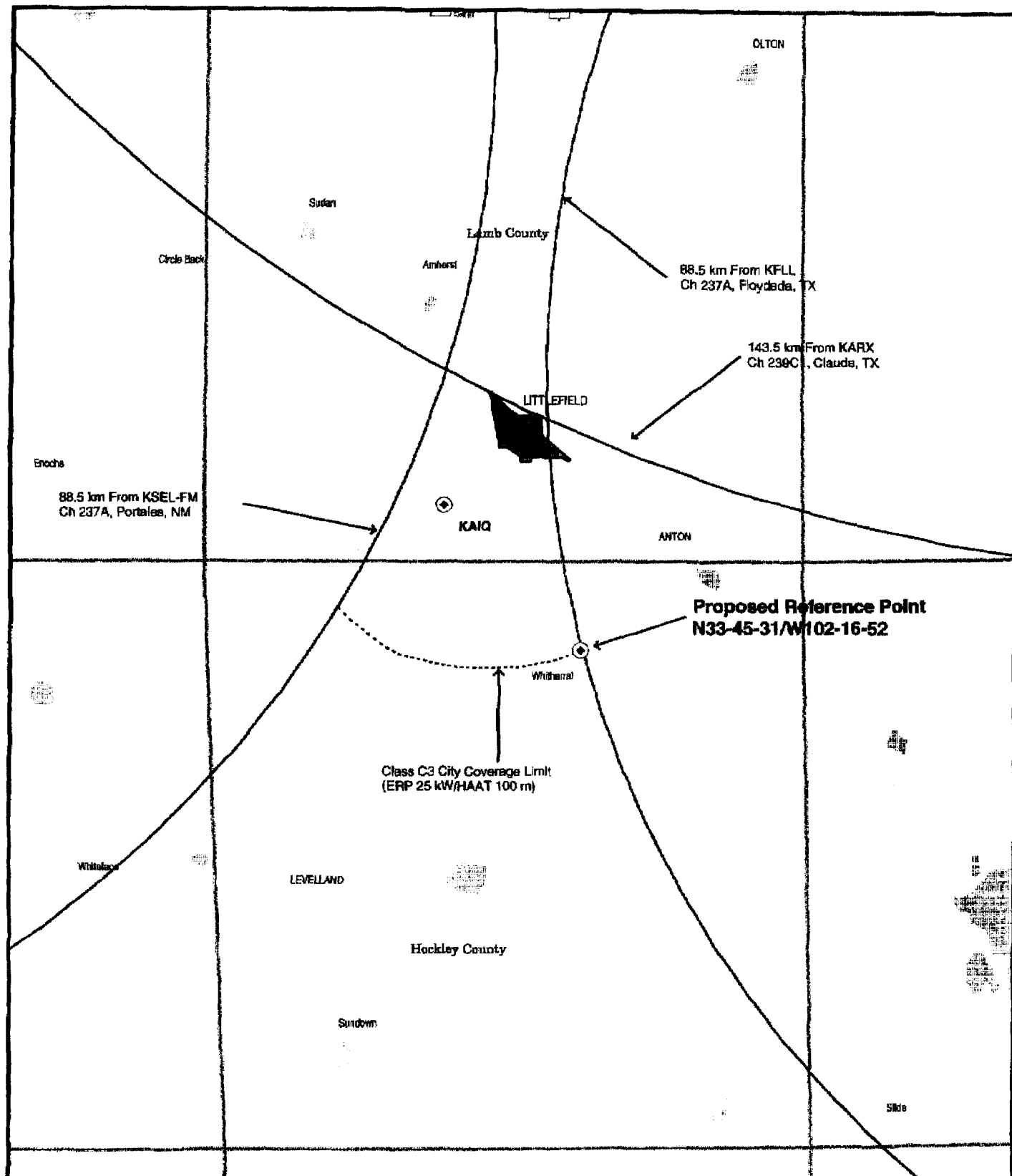
Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
KSELFM LIC	Portales NM	BMLH911018KB	237A 95.3	6.0 91.0	34-11-51 103-19-24	293.7	92.53 3.53	89 CLOSE
NEW APP FCPS	Tahoka TX	BPH950824MC	237A 95.3	3.0 100.0	33-08-15 101-54-48	150.6	92.87 3.87	89 CLOSE
KFLL LIC	Floydada TX	BLH850404LP	237A 95.3	3.00 71.0	33-58-07 101-21-13	83.1	97.73 8.73	89 CLOSE
KAIQ PDEL	Tahoka TX	RM8634	237A 95.3	.0	33-06-47 101-49-49	147.5	99.17 10.17	89 CLOSE
Petition for Recon 4-21-97								
ALC	Tahoka TX	Docket84-231	237A 95.3	.0	33-06-47 101-49-49	147.5	99.17 10.17	89 CLOSE
First Come/First Serve Allotment								
KAIQ CP	Littlefield TX	BPH930726MB	238C3 95.5	25. 35.0	33-52-02 102-24-12	.0	.00	
KAIQ PDEL	Littlefield TX	RM8634	238C3 95.5	.0	33-56-17 102-20-38	34.8	9.60 -143.40	153 SHORT
Petition for Recon. 4-21-97								
KAIQ PADD	Wolfforth TX	RM8634	238C3 95.5	.0	33-25-48 102-03-35	146.7	58.04 -94.96	153 SHORT
Site Restricted 9.3 Km (5.8 mi) South-Petition for Recon 4-21-97								
KVRPFM LIC	Haskell TX	BLH810416AA	238C1 95.5	100. 162.0	33-09-40 99-48-57	107.4	252.84 41.84	211 CLEAR
KPER LIC	Hobbs NM	BLH811118AM	239C3 95.7	25.0 78.0	32-43-28 103-09-03	208.9	144.62 45.62	99 CLEAR
Horizontally polarized only Class C with respect to Mexico.								
KARX LIC	Claude TX	BLH920422KB	239C1 95.7	100. 119.0	35-06-16 101-39-28	26.2	153.39 9.39	144 CLOSE
PADD	Littlefield TX	RM8634	240C3 95.9	.0	33-55-12 102-30-56	299.6	11.93 -31.07	43 SHORT
Site Restriction 17.0km West-Alternate Site-Petition for Recon 4-21-97								
PADD	Littlefield TX	RM8634	240C3 95.9	.0	33-59-19 102-27-34	339.0	14.44 -28.56	43 SHORT
Alternate Channel-Petition for Recon 4-21-97								

** End of separation study for channel 238C3 **



**AREA-TO-LOCATE
CH 238C3, LITTLEFIELD, TX
WITH CONSIDERATION GIVEN TO THE
CH. 237A ALLOTMENT AT TAHOKA, TX**

du Treil, Lundin & Rackley, Inc. Sarasota, Florida



AREA-TO-LOCATE
CH 238C3, LITTLEFIELD, TX
WITHOUT CONSIDERATION GIVEN TO THE
CH. 237A ALLOTMENT AT TAHOKA, TX

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

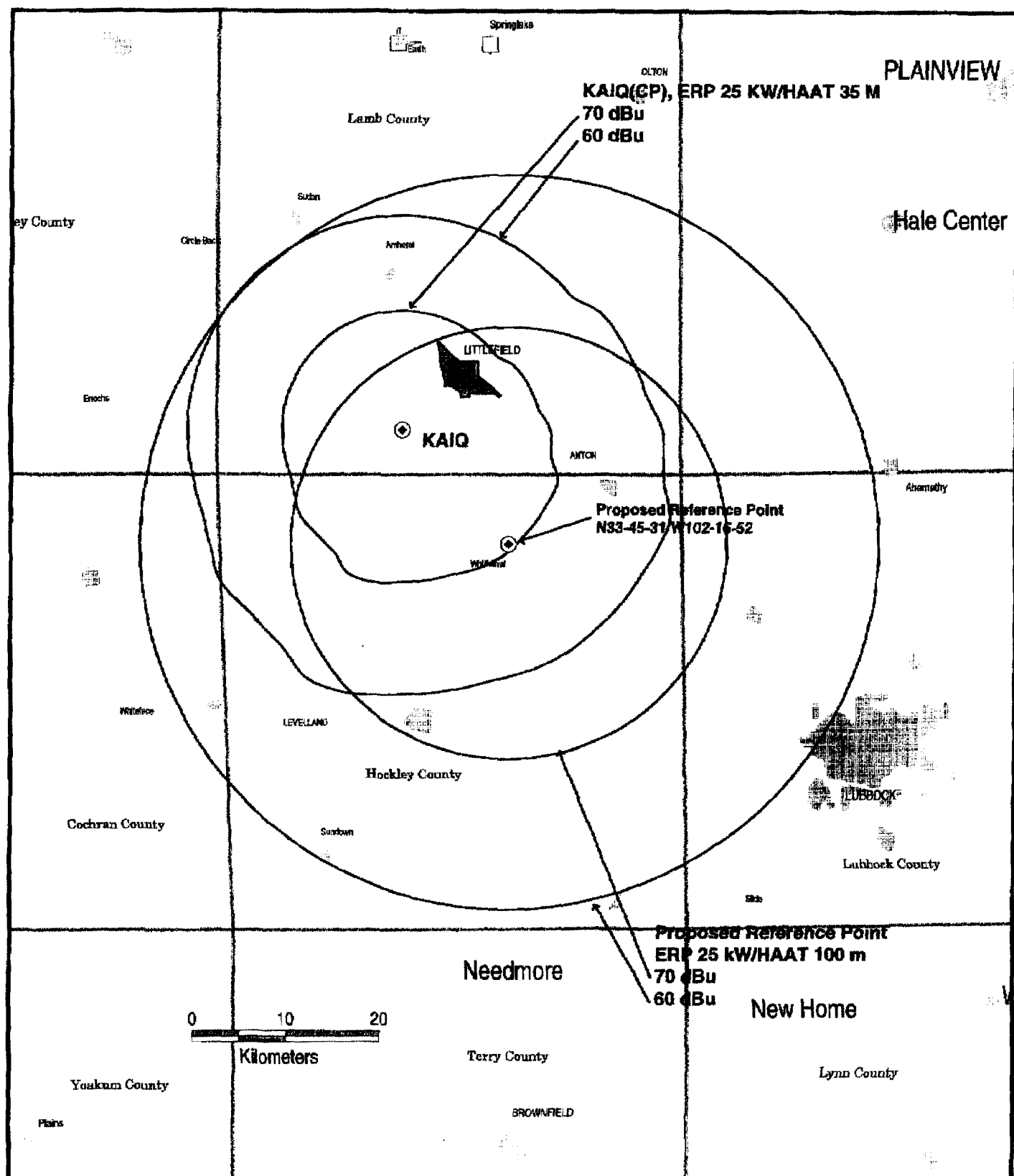
FM SEPARATION STUDY

[illegible]

Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
NEW APP FCFS	Tahoka TX	BPH950824MC	237A 95.3	3.0 100.0	33-08-15 101-54-48	153.6	76.92 -12.08	89 SHORT ¹
KAIQ PDEL	Tahoka TX	RM8634	237A 95.3	.0	33-06-47 101-49-49	149.6	82.98 -6.02	89 SHORT ¹
Petition for Recon 4-21-97								
ALC	Tahoka TX	Docket84-231	237A 95.3	.0	33-06-47 101-49-49	149.6	82.98 -6.02	89 SHORT ¹
First Come/First Serve Allotment								
KFLL LIC	Floydada TX	BLH850404LP	237A 95.3	3.00 71.0	33-58-07 101-21-13	74.5	88.94 -0.06	89 CLOSE
KSELFM LIC	Portales NM	BMLH911018KB	237A 95.3	6.0 91.0	34-11-51 103-19-24	297.2	107.93 18.93	89 CLEAR
KAIQ CP	Littlefield TX	BPH930726MB	238C3 95.5	25. 35.0	33-52-02 102-24-12	317.0	16.54 -136.46	153 SHORT
KAIQ PDEL	Littlefield TX	RM8634	238C3 95.5	.0	33-56-17 102-20-38	343.8	20.74 -132.26	153 SHORT
Petition for Recon. 4-21-97								
KAIQ PADD	Wolfforth TX	RM8634	238C3 95.5	.0	33-25-48 102-03-35	150.6	41.85 -111.15	153 SHORT
Site Restricted 9.3 Km (5.8 mi) South-Petition for Recon 4-21-97								
KVRPFM LIC	Haskell TX	BLH810416AA	238C1 95.5	100. 162.0	33-09-40 99-48-57	105.5	238.58 27.58	211 CLEAR
KARX LIC	Claude TX	BLH920422KB	239C1 95.7	100. 119.0	35-06-16 101-39-28	20.7	159.92 15.92	144 CLOSE
PADD	Littlefield TX	RM8634	240C3 95.9	.0	33-55-12 102-30-56	309.7	28.14 -14.86	43 SHORT
Site Restriction 17.0km West-Alternate Site-Petition for Recon 4-21-97								
PADD	Littlefield TX	RM8634	240C3 95.9	.0	33-59-19 102-27-34	327.3	30.39 -12.61	43 SHORT
Alternate Channel-Petition for Recon 4-21-97								

** End of separation study for channel 238C3 **

¹ The substitution of channel 278A for channel 237A at Tahoka, as set forth by the 21st Century Radio Ventures, Inc. in MM Docket No. 95-83, would eliminate these short-spacings.



PREDICTED COVERAGE CONTOURS CH 238C3, LITTLEFIELD, TX

du Treil, Lundin & Rackley, Inc. Sarasota, Florida